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9 Counsel for Defendant MARTEARENA-ARRIOLA

10

11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13

14 UNITED STATES OF AMERICA, ) No. CR-08-0272 SI  
15 v. )  
16 CELSO MARTEARENA-ARRIOLA, ) DEFENDANT'S MOTION IN LIMINE  
17 Plaintiff, ) TO EXCLUDE FINGERPRINT EXPERT  
18 ) Pre-Trial Conference: June 24, 2008  
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17 **I. BACKGROUND**

18 On or about June 9, 2008, the government provided defense counsel with a curriculum  
19 vitae (“CV”) for Kenneth M. Woods, Senior Fingerprint Specialist for the Department of  
20 Homeland Security. The CV was accompanied by a report, dated April 22, 2008, which appears  
21 to have been prepared by Woods (attached hereto as Exhibit A). The report lists various exhibits,  
22 each of which apparently contained a fingerprint impression. The report also contains a section  
23 bearing the heading “FINDINGS,” which states as follows:

24 The fingerprint impressions appearing on exhibits 1.1 through 1.8 were made by  
25 the same individual.

26 The fingerprint individualizations were established by comparative analysis of the  
friction ridge detail for the fingerprint impressions in question.

1 Ex. A at CMA0421.

2 On June 13, 2008, the government filed with this Court a document entitled “Notice of  
 3 Expert Testimony (Rule 16).” *See Exhibit B* (attached hereto). The government’s Notice  
 4 essentially re-summarizes the information already contained in the Woods CV and April 22,  
 5 2008 report; the Notice also provides the following additional information:

- 6 • Mr. Woods will testify that his conclusions are based on two fundamental  
 7 principles of friction ridge identification: (1) friction ridges begin to develop *in*  
 8 *utero* and persist unchanged until after death; and (2) no two fingerprints are the  
 9 same, even in identical twins. *See Ex. B at 2.*
- 10 • “Mr. Woods will testify that the means of arriving at this conclusion was based on  
 11 the standard ACE-V (Analysis, Comparison, Evaluation – Verification)  
 12 methodology and he will further explain this methodology.” *Id.*

13 Because the government’s expert disclosure does not comply with the requirements of  
 14 Federal Rule of Criminal Procedure 16, the Defendant respectfully requests that this Court  
 15 exclude the government’s proffered expert.

## 16 II. DISCUSSION

### 17 A. The Government’s Expert Should Be Excluded Because the Government Has Not 18 Complied With the Requirements of Rule 16(a)(1)(G)

19 In order to call an expert witness, the government must comply with the expert disclosure  
 20 requirements of Rule 16(a)(1)(G) of the Federal Rules of Criminal Procedure. This provision  
 21 requires the government to disclose not only a written summary of the expert’s anticipated  
 22 opinions, but also a description of the “bases and reasons for those opinions.” Fed. R. Crim. P.  
 23 16(a)(1)(G). The purpose of Rule 16(a)(1)(G) is “to minimize surprise that often results from  
 24 unexpected expert testimony, reduce the need for continuances, and to provide the opponent with  
 25 a fair opportunity to test the merit of the expert’s testimony through focused cross-examination.”  
 26 Fed. R. Crim. P. 16 Advisory Committee Notes to 1993 amendment.

1       The government's disclosure in this case fails to meet the requirements of Rule  
2 16(a)(1)(G). While the government's disclosure does state the ultimate opinion to be offered by  
3 Woods – *i.e.*, the fingerprints on each of the various document were made by the same individual  
4 – it does not adequately identify the “bases and reasons” that led Woods to this conclusion. For  
5 example, the government's Notice does not: (1) contain a description of the various fingerprints;  
6 (2) identify any purported similarities between the various fingerprints which would support the  
7 expert opinion; (3) identify any dissimilarities between the various fingerprints which might  
8 undermine the expert opinion; or (4) describe what factors most strongly supported the proposed  
9 expert testimony. Nor has the government disclosed any notes that were taken by Woods during  
10 his analysis, or any computer data that may have been generated during such an analysis. The  
11 government's recitation of two generalized “principles of friction ridge identification” cannot  
12 substitute for a disclosure of the *actual* bases and reasons for the proposed expert testimony in  
13 this specific case.

14       Furthermore, while it is evident from the government's disclosure that Mr. Woods  
15 engaged in a “comparative analysis of the friction ridge detail for the fingerprint impressions in  
16 question” – *i.e.*, he compared the various fingerprints – and that he used the ACE-V  
17 methodology, the Notice does not describe this methodology, the underlying principles or  
18 practices, or explain why it is considered a reliable methodology by those with skill or experience  
19 in the field. *Cf.* Fed. R. Evid. 702, 703.

20       Because of the scarcity of information contained in the government's Notice of Expert  
21 Testimony, the defense is unable to adequately ascertain the admissibility of Mr. Woods's  
22 proposed expert testimony or to fairly “test the merit of the expert's testimony through focused  
23 cross-examination.” Fed. R. Crim. P. 16 Advisory Committee Notes to 1993 amendment.  
24 Accordingly, the Court should exclude the testimony of the government's proffered expert. *See*  
25 Fed. R. Crim. P. 16(d)(2)(C).

26

### III. CONCLUSION

For the foregoing reasons, the Defendant respectfully requests that this Court issue an order excluding the testimony of the government's proffered expert.

Dated: June 17, 2008

Respectfully submitted,

/S

BARRY J. PORTMAN  
Federal Public Defender

# EXHIBIT A

# EXHIBIT A



**U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
Office of Investigations  
Forensic Document Laboratory (FDL)**

April 22, 2008

FDL-08-04491

Deportation Officer Cesar J. Lopez  
U.S. Immigration and Customs Enforcement  
630 Sansome Street, Room 520  
San Francisco, CA 94111  
415-844-5134

REF: A91761305

**EXHIBIT(S):**

- 1.1 I-205, Warrant of Removal / Deportation for MARTEARENA-ARRIOLA, CEISO, A# 91 761 305, executed on 4-27-05, with a fingerprint impression thereon.
- 1.2 I-205, Warrant of Removal / Deportation for MARTEARENA-Arriola, Celso, A# 91 761 305, executed on 6-21-01, with a fingerprint impression thereon.
- 1.3 I-205, Warrant of Removal / Deportation for MARTEARENA-Arriola, Celso A., A# 91 761 305, executed on 8-7-98, with a fingerprint impression thereon.
- 1.4 I-205, Warrant of Deportation for MARTEARENA-Arriola, Celso, A# 91 761 305, executed on 11-14-95, with a fingerprint impression thereon.
- 1.5 I-205, Warrant of Deportation for MARTEARENA-Arriola, Celso, A# 91 761 305, executed on 11-29-94, with a fingerprint impression thereon.
- 1.6 FD-249, Fingerprint Card bearing fingerprint impressions and the name MARTEARENA-ARRIOLA, CELSO, A# 91 761 305, dated 4-7-08.
- 1.7 FD-249, Fingerprint Card bearing fingerprint impressions and the name MARTEARENA-Arriola, Celso, A# 91 761 305, dated 2-20-01.
- 1.8 FD-249, Fingerprint Card bearing fingerprint impressions and the name MARTEARENA-Arriola, Celso, A# 91 761 305, dated 11-14-95.

**FINDINGS:**

The fingerprint impressions appearing on exhibits 1.1 through 1.8 were made by the same individual.

The fingerprint individualizations were established by a comparative analysis of the friction ridge detail for the fingerprint impressions in question.

**REMARKS:**

The evidence was delivered to the FDL Forensic Section on April 18, 2008 and will be returned to the submitter by official courier.

The Forensic Document Laboratory requires the Project Code 0E7 for Fingerprint Examinations to be entered into Case Management by the assigned case agent.



FDL-08-04491

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April 22, 2008

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Kenneth M. Woods  
Senior Fingerprint Specialist

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AN ASCLD/LAB® ACCREDITED LABORATORY SINCE FEBRUARY 2001



CMA0422

Kenneth M. Woods  
 Senior Fingerprint Specialist  
 Department of Homeland Security  
 U.S. Immigration and Customs Enforcement  
 Forensic Document Laboratory

**EDUCATIONAL EXPERIENCE**

1978-1982      Virginia Commonwealth University:  
 Graduated with Bachelors of Science degree in Administration of Justice.

**PROFESSIONAL SCHOOLS and TRAINING**

Year	Agency	Course Description
1982	Northern Virginia Criminal Justice Academy	Basic Academy
1987	NVCJA	Bloodstain Pattern Analysis Workshop
1987	Prince William County Criminal Justice Academy	Crime Scene Technician School
1988	NVCJA	Instructor Development
1989	VA Bureau of Forensic Science	Forensic Science Academy
1989	VA Bureau of Forensic Science	Medical – Legal Aspects of Death Investigation
1989	VABFS	Forensic Academy Annual Retaining
1990	VABFS	Forensic Academy Annual Retraining
1991	VABFS	Forensic Academy Annual Retraining
1992	NVCJA / FBI	Advanced Latent Fingerprint Examination
1992	VABFS	Forensic Academy Annual Retaining
1992	FBI Academy	Fingerprint Testimony and Demeanor School
1993	VA Division of Forensic Science	Fingerprint Examiners Annual Seminar
1993	Metropolitan Washington Police Department	Forensic Light Source and Chemistry Seminar
1993	Alexandria Police Department / FBI	Basic Fingerprint Classification
1993	VADFS	Forensic Academy Annual Retraining
1994	VADFS	Forensic Academy Annual Retraining
1994	NOVARIS	Demystifying Palm Prints
1995	VADFS	Forensic Academy Annual Retraining
1996	US Park Police / FBI	Latent Fingerprint Examination

1997	VADFS	Alternate Light Source Workshop
1997	Chesapeake Bay Division / International Association for Identification	Fingerprint and Crime Scene Work Educational Seminar
1997	VADFS	Forensic Academy Annual Retraining
1997	CBD / IAD	Educational Seminar
1998	VADFS	Fingerprint Examiners Annual Seminar
1998	Maryland State Police Laboratory	Advanced Footwear and Tire Track Examination Course
1998	VADFS	Forensic Academy Annual Retraining
1999	CBD / IAI	Educational Seminar
1999	PWCJA / William Bodziak	Advanced Footwear Examination Course
1999	VADFS	Forensic Academy Annual Retraining
1999	CBD / IAI	Educational Seminar
2000	VADFS	Forensic Academy Annual Retraining
2000	VA State Police	AFIS 21 Training
2001	PWCJA	Advanced Fingerprint Testimony
2001	CBD / IAI	Educational Seminar
2001	VADFS	Fingerprint Examiners Seminar
2002	VADFS	Forensic Academy Annual Retraining
2002	CBD / IAI	Educational Seminar
2003	VADFS	Fingerprint Examiners Seminar
2003	VADFS	Forensic Academy Annual Retraining
2003	CBD/IAI	Educational Seminar
2004	VADFS	Forensic Academy Annual Retraining
2004	CBD/IAI	Educational Seminar
2005	VADFS	Forensic Academy Annual Retraining
2005	CBD/IAI	Educational Seminar
2007	New York State Police / IAI	Forensic Ridgeology
2007	CBD/IAI	Educational Seminar
2007	CBD/IAI	Latent Impressions Search Smart
2007	VADFS	Forensic Academy Annual Retraining
2007	ICE/FDL	Preparing for Daubert Testimony
2008	CBD/IAI	Educational Seminar
2008	CBD/IAI	Microscopy Workshop

#### EXPERT TESTIMONY EXPERIENCE

I have been accepted as an expert in fingerprint examination, footwear examination, as well as crime scene processing in all three levels of court in Prince William County.

I have been accepted as an expert in fingerprint examination in U.S. District Court, in the Districts of Arizona, and the Virgin Islands.

#### PROFESSIONAL EXPERIENCE

1982 to 1990 - Prince William County VA Police, patrol officer. Duties to include: Handling calls for service, The investigation of crimes and accidents, The arrests and processing of prisoners, The location, preservation, documentation, and collection of evidence. Chemically processing of items for latent fingerprints, Apprenticeship in fingerprint examination, Courtroom testimony in cases investigated, Instructing other members of the police department in fingerprint and crime scene matters.

1991 to 2003 Crime Scene Analyst. Duties to include: Location, preservation, documentation, and collection of physical evidence in the major crime scenes of the county, the chemically processing of evidence for latent fingerprints. Training in the examination and comparison of fingerprints and footwear impressions. Instruction other members of the Department in fingerprint matters, crime scene processing, and footwear examination.

2003 to March 2007 - Fingerprint Technician. Duties to include: Conducting manual and computer comparisons of fingerprints and latent impressions. Effect identifications and report findings. Maintain records for future examinations and criminal history. Responding to subpoenas and providing expert testimony when needed. Additionally, continuing education and instruction in crime scene matters and footwear and tire track comparison are completed annually. Footwear and tire track comparisons were conducted and reports of findings generated.

March 2007 to Present – Senior Fingerprint Specialist - Department of Homeland Security, Immigration and Customs Enforcement, Forensic Document Laboratory, Duties include but are not limited to the comparison of both known and latent fingerprint impressions utilizing standard methodology. The position also requires the proper handling and documentation of evidence. The chemical processing of evidentiary items submitted to the laboratory for analysis. The position requires the operation of several Automated Fingerprint Identification Systems (AFIS), for the search of unknown impressions. Court testimony would be provided as needed for the individual cases processed.

# EXHIBIT B

# EXHIBIT B

1 JOSEPH P. RUSSONIELLO (CSBN 44332)  
2 United States Attorney

3 BRIAN J. STRETCH (CSBN 163973)  
4 Chief, Criminal Division

5 TRACIE L. BROWN (CSBN 184339)  
LARA M. KROOP (CSBN 239512)  
Special Assistant United States Attorney

6 450 Golden Gate Avenue, Box 36055  
7 San Francisco, CA 94102  
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9  
10 Attorneys for Plaintiff

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 UNITED STATES OF AMERICA, ) No. CR 08-0272 SI  
16 Plaintiff, ) GOVERNMENT'S NOTICE OF EXPERT  
17 v. ) TESTIMONY (RULE 16)  
18 CELSO MARTEARENA-ARRIOLA, ) Trial Date: June 30, 2008  
19 Defendant. ) Pretrial Conf.: June 24, 2008

20 Pursuant to Federal Rule of Criminal Procedure 16(a)(1)(G) and discovery previously  
21 provided in the matter, the government here discloses the expert testimony it intends to offer at  
22 trial. The government reserves its right to supplement this Notice as its trial preparation  
23 continues.

24 I. Expert's Qualifications

25 Kenneth Woods is a Senior Fingerprint Specialist with the Department of Homeland  
26 Security, Immigration and Customs Enforcement, Forensic Document Laboratory in McLean,  
27 Virginia. He has more than 20 years of experience in the field of fingerprint identification. He  
28 is qualified as an expert in fingerprint examination in the U.S. District Court for the Districts of

GOVT'S EXPERT NOTICE  
CR 08-0272 SI

1 Arizona and the Virgin Islands. He has also been accepted as an expert in fingerprint  
2 examination in all three levels of court in Prince William County, Virginia.

3 The government provided a full summary of Mr. Woods' qualifications, as contained in his  
4 curriculum vitae, to the Defendant on June 9, 2008. *See* Bates No.CMA0423-0425.

5 **II. Expert's Opinions and Bases Therefor**

6 Mr. Woods will testify as to his review and examination of the fingerprints on the  
7 Warrants of Deportation and the fingerprints on the fingerprint cards contained in the  
8 Defendant's A-file. The government anticipates that Mr. Woods will offer his expert opinion  
9 that the fingerprints on each document that he reviewed and examined were made by the same  
10 individual. He will testify that his opinion was made by an analysis, comparison, and evaluation  
11 of the friction ridge detail on the documents he reviewed. Mr. Woods will also testify that his  
12 conclusions are based on the two fundamental principles of friction ridge identification: (1)  
13 friction ridges present in fingerprints begin to develop in the fetus and persist, unchanged, until  
14 after death when decomposition destroys the ridged skin and; (2) no two fingerprints are the  
15 same, even identical twins. Mr. Woods will further testify that the means of arriving at this  
16 conclusion was based on the standard ACE-V (Analysis, Comparison, Evaluation – Verification)  
17 methodology and he will further explain this methodology.

18 The government provided Mr. Woods' report of his analysis to the Defendant on June 9,  
19 2008. *See* Bates No. CMA0421-0422.

20  
21 DATED: June 13, 2008

Respectfully submitted,

22 JOSEPH P. RUSSONIELLO  
23 United States Attorney

24 /s/  
25 LARA M. KROOP  
26 Special Assistant United States Attorney  
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